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Attorneys & Counselors at Law

July 13, 2004

Honorable Judge Judith Dien, USMJ
U.S.D.C. - District of Massachusetts
1 Courthouse Way
Boston, Massachusetts 02210

Re: Holubar et al v Kholberger, et al.

Dear Honorable Judge Dien:

This letter will serve as Plaintiffs' objection to the Friday, July 9, 2004, 5:37pm phone call of Mr. Pfunder whereby Plaintiffs' counsel were informed that Mr. Pfunder was leaving for "a long planned vacation" and Mr. Radzik was predisposed and thus neither would appear for the scheduled July 15, 2004 Hearing.¹

The basis for Plaintiffs' objection is as follows: (1) I, like defendants' Mr. Radzik, am lead counsel and will be handling the hearing and substantive matters in this case; (2) at this juncture my schedule is full through mid-August (when the next set of depositions are noticed to occur) and thus does not permit my attendance at the alternate date(s) proposed by Mr. Pfunder; (3) the defendants are aware of my schedule and unavailability having discussed the same with them at the time of noticing defendants of the second set of depositions, (4) the relief sought in the subject motion is important and should be decided promptly due to the Court's Scheduling Order; (5) an additional subject of the July 15 Hearing is defendants' pattern of delay, contravening the Court Scheduling Order, to the prejudice of Plaintiffs, and (6) Mr. Pfunder's last minute requested adjournment is plainly another attempt to delay this matter and should be denied.

Plaintiffs object to defendants' requested adjournment and would respectfully request the Court instruct Mr. Radzik, who is admitted *pro hac vice* in this matter, and who is a partner in a many member firm, to appear for the scheduled hearing on July 15.

Respectfully submitted,
/s/ Bjorn J. Holubar
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¹ Additionally, defendants' counsel directed a letter to the Court prior to and without consultation of Plaintiffs' counsel.